

## **CANADA**

### **TRADE SUMMARY**

Canada has an affluent, high-technology, market-oriented economy. Its proximity to the United States and its general liberal trade regime has resulted in the volume of two-way bilateral trade surpassing that of the United States and any other single country. In 2000, imports of goods from Canada totaled \$229.2 billion, a 15.35 percent increase from 1999. Exports of U.S. goods to Canada totaled \$178.8 billion for the same period, a 7.32 percent increase from 1999.

U.S. exports of private commercial services (i.e., excluding military and government) to Canada were \$21.1 billion in 1999, and U.S. imports were \$15.2 billion. Sales of services in Canada by majority U.S.-owned affiliates were \$26.7 billion in 1998, while sales of services in the United States by majority Canadian-owned firms were \$43.4 billion.

The United States and Canada also share one of the world's largest bilateral direct investment relationships. In 1999, the stock of U.S. foreign direct investment in Canada was \$111.7 billion, while Canadian foreign direct investment in the United States was \$79.7 billion. U.S. investment in Canada, which is a major contributor to the U.S. non-merchandise trade surplus with Canada, is concentrated in manufacturing, natural resources and the Canadian financial sector.

### **A Trading Relationship Based on Free Trade**

The North American Free Trade Agreement (NAFTA) came into force on January 1, 1994. NAFTA superseded the U.S.-Canada Free Trade Agreement (CFTA) and expanded the free trade area to include Mexico. The NAFTA extended the CFTA to important sectors such as trade in services, investment, and government procurement. The bilateral phase-out of tariffs between Canada and the United States was completed on January 1, 1998, except for certain supply managed products in Canada and the United States. However, there still exist some non-tariff barriers of concern at both the federal and provincial levels, impeding access to the Canadian market for U.S. goods and services.

### **IMPORT POLICIES**

#### **Supply-Managed Products**

Canada closely restricts imports of certain "supply managed" agricultural products (whose domestic production is limited by quota, i.e., dairy products, eggs and poultry) through tariff- rate quotas, severely limiting the ability of U.S. producers to export to Canada.

In October 1999, the WTO Dispute Settlement Body (DSB) found that the provision of milk to exporters for processing at prices which were substantially below the prices charged for such milk when delivered for processing for domestic consumption constituted an export subsidy. In light of this finding, the DSB also concluded that

Canada had violated its export subsidy reduction commitments by exporting a higher volume of subsidized dairy products than permitted by Canada's obligations under the WTO Agreement on Agriculture. The DSB also found that Canada had improperly imposed a limit on the value of milk that could be imported in any single entry under the relevant tariff-quota.

Canada committed to bring its dairy export subsidy regime into compliance with its WTO obligations by December 2000, which was extended to January 31, 2001, by mutual agreement. On February 16, 2001, the United States requested that a WTO compliance panel reconvene to determine whether Canada has complied with the WTO recommendations and rulings on its dairy export subsidy regime. The United States also requested WTO reauthorization to suspend trade concessions if the panel determines that Canada has not complied. Under an agreement with Canada, the United States would not suspend trade concessions until an arbitrator has confirmed the level of trade harm to the United States.

The Province of Quebec continues to apply coloring restrictions on dairy margarine. In addition, provincial marketing restrictions to butter/margarine blends or imitation dairy products have served as a limitation and in certain cases, prohibition to the sales of these products into many provinces.

The Canadian Egg Marketing Agency maintains a dual pricing scheme for processed egg products. Under that regime, the domestic Canadian price for shell eggs is maintained at a level substantially above the world price. At the same time, producers are assessed a levy on all eggs sold and a portion of the levy is used to subsidize exports of eggs. This practice artificially increases Canadian exports of egg products at the expense of U.S. exporters.

#### **Horticultural Import Restrictions**

Canada continues to restrict international trade of bulk produce. Importers may request waivers, but Canadian federal and provincial authorities may deny such requests if an equivalent supply is available from other provinces. In addition, Canadian regulations on fresh fruit and vegetable imports prohibit consignment sales of fresh fruit and vegetables without a pre-arranged buyer.

#### **Restrictions on U.S. Grain Exports**

U.S. access to the Canadian grain market has been limited due in part to Canadian varietal controls. Canada requires that each variety of grain be registered and be visually distinguishable. Because U.S. varieties may not be visually distinct, they are not registered in Canada, resulting in U.S. wheat being sold in Canada as "feed" wheat at sharp discounts to the Canadian varieties.

#### **Other Products**

Market access barriers in many provinces continue to hamper exports of U.S. wine and spirits to Canada. These market access barriers include cost of service mark ups, listings, reference prices and discounting distribution and warehousing policies.

## **The Canadian Wheat Board and State Trading Enterprises**

Despite recent changes in the organization of the Canadian Wheat Board (CWB), the CWB continues to enjoy government-sanctioned monopoly status as well as other privileges that restrict competition. In October 2000, USTR initiated a 12-month investigation of Canadian Wheat Board practices in response to an industry petition.

The United States is calling for the WTO agriculture negotiations to create disciplines for State Trading Enterprises (STE's) that would end exclusive export rights, establish WTO requirements for notifying acquisition costs, export pricing, and other sales information for single desk exporters, and eliminate the use of government funds or guarantees to support or ensure the financial viability of single desk exporters.

## **Other Policies**

### **Restrictions on U.S. Publications**

In June 1999, the United States and Canada announced an agreement under which U.S. publications would be allowed gradually improved access to this market. They are currently permitted to earn up to 15 percent of advertising space from the sale of advertising primarily directed at the Canadian market. This ceiling will rise to 18 percent by mid-2002. Canada also agreed to permit foreign investment in its periodicals industry on the condition that such investments are of net benefit to Canada, and it extended certain tax deductions to non-Canadian-owned publications. The United States continues to monitor Canada's investment, tax, access systems and postal subsidies for Canadian produced magazines.

### **Softwood Lumber**

The 1996 U.S.-Canada Softwood Lumber Agreement is set to expire on March 31, 2001. The bilateral agreement was put in place to mitigate the effects of various Canadian provinces' timber sales practices and to provide time for reform. As little has changed in the Canadian provinces, the United States remains concerned about Canadian provincial timber sales practices and the lack of market principles in Canadian forest management systems.

### **Barriers to Film Exports**

Film classification, for the purpose of theatrical and home video distribution in Canada, is within the exclusive jurisdiction of the provinces. There are presently seven different provincial classification boards to which member companies must submit products destined for theatrical release, five of which also classify products intended for home video distribution.

In addition, the Province of Quebec requires that all video products bear a government issued clarification sticker. U.S. exports are burdened by this added regulatory requirement, which results in fewer titles being made available.

The lack of a national classification system and the negative precedent established by

the Quebec sticker procedures continue to create significant consumer confusion and administrative expense resulting in fewer U.S. exports.

U.S. exports are also constrained by the Quebec Cinema Act which encourages French language dubbing to be done in Quebec. The Cinema Act limits a company's ability to utilize the most cost effective means to dub a film in French, placing certain distribution restrictions on English language versions of those films that have been dubbed in French outside of the Province of Quebec.

## **INTELLECTUAL PROPERTY RIGHTS PROTECTION**

Articles 33 and 70 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) require all WTO Members to provide a patent term of at least 20 years from the date of filing of the patent application. For a large group of patents, Canada applies a term that in many cases is shorter, calculated as 17 years from the date that a patent is issued. A term of 17 years from issuance is not the same as a term of 20 years from filing. In response to a challenge by the United States, a WTO panel ruled in early 2000 that Canada's term of patent protection of 17 years for pre-1989 patents is inconsistent with Canada's WTO obligations. Canada was unsuccessful in appealing the ruling and has agreed to comply. On February 28, 2001, an arbitrator determined that Canada must comply by August 12, 2001. Furthermore, it appears that the Canadian Government might not be protecting against unfair commercial use of confidential test data submitted to it in support of marketing approvals for products such as pharmaceuticals. While Canadian law on its face seems to provide such protection, Canadian courts (including the Supreme Court) have apparently interpreted the law so narrowly as to render it meaningless.

Canada is a member of the World Intellectual Property Organization (WIPO). Canada also adheres to a number of international agreements, including the Berne Convention for the Protection of Literary and Artistic Works (1971), and the 1952 Universal Copyright Convention (UCC). These two agreements require that Canada provide national treatment with respect to intellectual property rights (IPR). On December 18, 1997, the Canadian government committed itself to sign two new international treaties dealing with copyright and with protection for performers and phonogram producers. The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty are designed to establish important rules for the protection of copyrighted works in a digital network environment. For example, the treaties call for governments to: (1) ensure that authors, program writers, and composers have the exclusive right to make their works available online; (2) prohibit tampering with the technology designed to manage access to, and compensation for, music, programs, and literary works provided over the Internet; and (3) prohibit actions to circumvent technology intended to guard against copyright piracy.

The 1997 amendments to Canada's Copyright Act contain two provisions under which Canada applies reciprocal rather than national treatment. The first provision is for the payment of a neighboring rights royalty to be made by broadcasters to artists from

countries that are signatories of the 1961 Rome Convention. The royalty has been set by the Copyright Board for five years, 1998 B 2002, and Canada started collecting it retroactively as of January 1, 1998. The United States is not a signatory of the Convention, and it is not yet clear whether U.S. artists will receive national treatment in the distribution of these royalties.

The second provision is for the payment of a levy by manufacturers and importers of blank analog and digital tapes and diskettes to artists from countries that afford an equivalent benefit to Canadian artists. On November 28, 2000, the Copyright Board concluded hearings on proposed levies for blank audio recording media for 2001 and 2002. The proposed levies are as follows: 50 cents for each audio cassette from 40 minutes up to and including 60 minutes in length (an increase of 26.7 cents from the current levy); 75 cents for each audio cassette over 60 minutes in length and up to and including 90 minutes in length (an increase of 14.2 cents from the current levy). In addition, C\$1.00 for each audio cassette over 90 minutes in length will be charged, as will 50 cents for each CD-R or CD-RW, and C\$1.75 for each CD-R audio, CD-RW audio or minidisc. Canada's copyright law stipulates reciprocity in application of the blank tape levy to foreign artists. The United States does not impose a levy on analog tape, only on digital audio recording media, with proceeds distributed to applicable artists, including Canadians.

The United States perceives Canada's reciprocity requirement for both the neighboring rights royalty and the blank tape levy as denying national treatment to U.S. copyright holders. Consequently, the United States Trade Representative (USTR) has placed Canada on its Special 301 "Watch List." While Canada may grant some or all of the benefits of the new regime to other countries, if it considers that such countries grant or have undertaken to grant equivalent rights to Canadians, Canada has yet to announce a determination with regard to the United States.

## **SERVICES BARRIERS**

### **Broadcasting**

The Broadcasting Act lists among its objectives, "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." The federal broadcasting regulator, the Canadian Radio Television and Telecommunications Commission (CRTC), is charged with implementing this policy. The CRTC requires that for Canadian conventional, over-the-air broadcasters, Canadian programs make up 60 percent of television broadcast time overall and 50 percent during evening hours (6 p.m. to midnight). It also requires that 35 percent of popular musical selections broadcast on radio should qualify as "Canadian" under a Canadian Government determined points system. For direct to home (DTH) broadcast services, a preponderance (more than 50 percent) of the channels received by DTH subscribers must be Canadian programming services. For other services like specialty television and pay audio services, the required percentage of Canadian content varies according to the nature of the service.

The Broadcasting Act also requires Canadian cable television providers to carry a majority of Canadian signals and services. Under previous CRTC policy, in cases where

a Canadian service was licensed in a format competitive with that of an authorized non-Canadian service, the Commission could drop the non-Canadian service, if the new Canadian applicant requested it to do so. This policy led to one "de-listing" in 1995, and has deterred potential new entrants from attempting to enter the Canadian market. In July 1997, the CRTC announced that it would no longer be "disposed" to take such action. Nonetheless, Canadian licensees may still appeal the listing of competitive services. In this connection, the CRTC will consider the removal of existing non-Canadian services from the list if they change format so as to compete with a Canadian pay or specialty service.

A recent decision by the CRTC concerning acquisition of several television stations has increased the industry's concern about the impact of the CRTC's actions on U.S. audio visual goods and services exports to Canada. USTR will continue to closely monitor the effect of these policies on U.S. commercial interests.

### **Basic Telecommunications Services**

Under the terms of the WTO Agreement on Basic Telecommunications Services, Canada's commitments permit foreign firms to provide local, long distance, and international services through any means of technology, on a facilities or resale basis. However, Canada retained a 46.7 percent limit on foreign ownership for all services except fixed satellite services and submarine cables. In addition, Canada also retained a requirement for "Canadian control" of basic telecom facilities which stipulates that at least 80 percent of the members of a board of directors must be Canadian citizens. Canada has revised its universal service system, which had money contributed to the universal service fund based on a per-minute basis. This system potentially overcompensated incumbent local suppliers, who also competed in the long-distance sector. The Canadian regulator, CRTC, completed a rulemaking process to devise a more competitively-neutral collection system as of January 1, 2001.

### **Engineering Services**

The Canadian government, at the provincial and federal level, subsidizes Canadian firms' bids for feasibility studies and other work in third countries. Export subsidies are provided through the Export Development Corporation, the Canadian International Development Agency, and the Program for Export Market Development. Local engineers and construction firms are given preference for all government contracts. U.S. companies must form joint ventures with Canadian firms to bid on a project. There are also many interprovincial barriers to trade in AEC services in Canada which favor locally established firms over extra-provincial firms.

### **Legal**

For foreign legal consultants (advisory services on foreign and public international law only), a commercial presence must take the form of a sole proprietorship or partnership. In addition, four provinces B Prince Edward Island, Ontario, Alberta, and Newfoundland B require lawyers to be permanent residents to gain accreditation; Quebec requires that lawyers be Canadian citizens.

## **INVESTMENT BARRIERS**

### **General Establishment Restrictions**

Under the Investment Canada Act, the Broadcasting Act, the Telecommunications Act and standing Canadian regulatory policy, Canada maintains restrictions which inhibit new or expanded foreign investment in the energy, publishing, telecommunications, transportation, film, music, broadcasting, and cable television sectors.

### **Investment Canada Act**

The Investment Canada Act (ICA) is intended to regulate foreign investment in Canada. The Government of Canada reviews the direct or indirect acquisition by a non-Canadian of an existing Canadian business of substantial size (as defined below). It also reviews the specific acquisition of an existing Canadian business or establishment of a new Canadian business by a non-Canadian in designated types of business activity relating to Canada's cultural, heritage or national identity (as described below) where the federal government has authorized such review as being in the public interest.

The Government of Canada must be notified of any investment by a non-Canadian to:

- establish a new Canadian business (regardless of size); or
- acquire direct control of any existing Canadian business which either has assets of C\$5 million or more or is in a business that is identified by regulation to be culturally sensitive or in uranium production, financial services or transportation services; or
- acquire the indirect control of any existing Canadian business, the assets of which exceed C\$50 million in value.

The C\$5 million threshold is increased to C\$192 million in the case where the country of the acquiring non-Canadian investor is a member of the World Trade Organization (WTO), and there is no review process applicable to an indirect acquisition of a Canadian business by a non-Canadian whose country is a member of the WTO. The reviewing authority is the Department of Canadian Heritage in the case of investments related to cultural industries, and the Department of Industry in other cases. In practice, Canada has allowed most transactions to proceed, though in some instances only after compliance by the applicant with certain undertakings. The ICA sets strict time limits within which the reviewing authority must respond, in an effort to ensure that the legislation does not unduly delay any investment in Canada.

### **Publishing Policy**

Since January 1992, Canadian book publishing and distribution firms that would transfer to foreign ownership through indirect acquisition need not be divested to Canadian control, but the foreign investor must negotiate specific commitments to promote Canadian publishing. Foreign investors may directly acquire Canadian book firms under

limited circumstances. Under an agreement on periodicals reached with the United States in May 1999, Canada permits 100% foreign ownership of businesses to publish, distribute and sell periodicals. However, direct acquisition by foreign investors of existing Canadian-owned businesses continues to be prohibited.

### **Film Industry Investment**

Canadian policies prohibit foreign acquisitions of Canadian-owned film distribution firms and allow investment to establish new distribution firms only for proprietary products. Indirect or direct acquisition of a foreign distribution firm operating in Canada is only allowed if the investor undertakes to reinvest a portion of its Canadian earnings in a manner specified by the Canadian Government.

### **GOVERNMENT PROCUREMENT**

As a Party to the WTO Government Procurement Agreement (GPA), Canada allows U.S. suppliers to compete on a non-discriminatory basis for its federal government contracts covered by the GPA. However, Canada is the only GPA Party that has not yet agreed to open up "sub-central" government procurement markets (i.e., procurement by provincial governments and Canadian "crown corporations"), which it had committed to do no later than July, 1997. Some Canadian provinces maintain "Buy Canada" price preferences and other discriminatory procurement policies that favor Canadian suppliers over U.S. and other foreign suppliers. British Columbia, Ontario and Quebec appear to apply such restrictions systematically. To maintain legal reciprocity and an incentive for further progress, Canadian suppliers do not benefit from the United States' GPA commitments with respect to 37 state governments' procurement markets. However, the Administration and some U.S. states have expressed concern that the Canadian provincial restrictions may, in some cases, result in an imbalance of commercial opportunities in bilateral government procurement markets.

### **ELECTRONIC COMMERCE**

There are currently few barriers to U.S.-based electronic commerce in Canada. In the WTO

context, Canada has supported the U.S. initiative for duty-free cyberspace. The Canadian Radio Television and Telecommunications Commission (CRTC) announced in 1999 that it would not attempt to regulate the Internet.

Early in 2000, Canada passed a new personal information protection law, the Personal Information Protection and Electronic Documents Act, which took effect on January 1, 2001. It requires persons or firms which collect personal

information in the course of commercial activities to inform the subject of all purposes to which the data may be put, and to obtain informed consent for its use. This law initially applies only to the federally regulated private sector (e.g., airlines and telecommunications) but its application will expand to other commercial activities in 2003, or when provincial governments pass similar legislation, as Ontario has already done.





